

1 DAVID J. BERGER, State Bar No. 147645
2 KAREN KWOK, State Bar No. 307464
3 WILSON SONSINI GOODRICH & ROSATI
4 Professional Corporation
5 650 Page Mill Road
6 Palo Alto, CA 94304-1050
7 Telephone: (650) 493-9300
8 Facsimile: (650) 565-5100
9 Email: dberger@wsgr.com
10 Email: kkwok@wsgr.com

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
12/30/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

7 MICHAEL S. SOMMER (*pro hac pending*)
8 JESSICA L. MARGOLIS (*pro hac pending*)
9 SARA N. BRICKER (*pro hac pending*)
10 WILSON SONSINI GOODRICH & ROSATI
11 Professional Corporation
12 1301 Avenue of the Americas, 40th Floor
13 New York, New York 10019
14 Telephone: (212) 999-5800
15 Facsimile: (212) 999-5899
16 Email: msommer@wsgr.com
17 Email: jmargolis@wsgr.com
18 Email: sbricker@wsgr.com

CGC-22-603753

15 Attorneys for Plaintiff

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 CITY AND COUNTY OF SAN FRANCISCO

18 CALIFORNIA DENTAL ASSOCIATION, a)
19 California Corporation,)
20 Plaintiff,)

21 v.)

22 DELTA DENTAL OF CALIFORNIA, a)
23 California Corporation; LYNN L. FRANZOI;)
24 ROY A. GONELLA; GLEN F. BERGERT;)
25 STEVEN F. MCCANN; HEIDI YODOWITZ;)
26 TERRY A. O'TOOLE; ANDREW J. REID;)
27 MICHAEL J. CASTRO; ALICIA F. WEBER;)
28 and DOES 1 through 20, inclusive,)
Defendants.)

CASE NO.:

VERIFIED COMPLAINT FOR:

1. **BREACH OF DUTY OF CARE**
2. **BREACH OF DUTY OF LOYALTY**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**
4. **BREACH OF CONTRACT**
5. **DECLARATORY RELIEF**

1 Plaintiff California Dental Association (“CDA”), on behalf of its members who are
2 Delta Dental’s Dentist Members,¹ brings this action and Verified Complaint based upon
3 personal knowledge of its own acts and upon information and belief as to all other matters
4 alleged against (i) Delta Dental of California (“Delta Dental” or the “Company”); (ii) certain of
5 Delta Dental’s Board of Directors (the “Director Defendants”); (iii) certain of Delta Dental’s
6 officers (the “Officer Defendants,” collectively with the Director Defendants, “Individual
7 Defendants”); and (iv) DOES 1-20, inclusive (collectively with Delta Dental and the Individual
8 Defendants, “Defendants”).

9 NATURE OF THE ACTION

10 1. This case challenges the actions and decisions of Delta Dental, a non-profit, tax-
11 exempt corporation that receives billions of dollars in annual revenues and pays its directors
12 hundreds of thousands of dollars per year and its officers millions of dollars per year – all
13 supposedly in furtherance of its stated mission of enlisting the “strongest network” of dentists
14 in California so that these dentists, who are members of Delta Dental, can provide critical
15 services to the public. Unfortunately, the reality is that, under the guise of seeking to provide
16 affordable dental plans to large corporate and government clients, Defendants have operated
17 Delta Dental as a private insurance company for their own financial gain without regard for the
18 extraordinary community of dentists and their teams who actually provide the critical oral
19 health care to the adults and children who need these services. As a result, Defendants are
20 obtaining substantial wealth at the expense of Delta Dental’s Dentist Members.

21 2. On September 1, 2022, Delta Dental notified its Dentist Members who are
22 Premier Specialty Dentists² that beginning January 1, 2023, Delta Dental would substantially
23 reduce the reimbursement fee allowable for services rendered to patients with a Delta Dental
24 plan and make other contractual changes. Specifically, Delta Dental announced that it will

25 ¹ “Dentist Members” are the licensed dentists in California with whom Delta Dental contracts.

26 ² Premier Specialty Dentists are California specialists such as periodontists, endodontists and
27 oral surgeons who are parties to or subject to, a Participating Provider Agreement (“PPA”) with
28 Delta Dental for participation in the Delta Dental Premier Network to provide dental benefit
coverage.

1 reduce various reimbursement fees for specialty providers, including but not limited to
2 periodontists, endodontists and oral surgeons, while simultaneously changing the entire nature
3 of the fee determination process. These changes will effectively lower reimbursement fees for
4 these and other specialty providers by 20% to 40%. These fee changes are especially injurious
5 because, as admitted by Delta Dental, Delta Dental does not allow for most of its Dentist
6 Members to negotiate their reimbursement fees, which have remained stagnate for more than a
7 decade while the dentists' costs of providing dental care have increased significantly over that
8 time.

9 3. Delta Dental's other Dentist Members fare no better. Although Delta Dental
10 purports to modestly increase certain fees for certain of these dentists, the reality is that these
11 reimbursement increases are so insignificant they might as well be considered rounding errors.
12 Meanwhile, at the same time Delta Dental is implementing these modest increases in fees
13 associated with certain less common services – fees that were and remain below market – Delta
14 Dental is decreasing the fees applicable to more routine services. The result is that Delta
15 Dental's Dentist Members not only continue to receive below market reimbursement fees for
16 the majority of their services, but the changes Delta Dental has announced it will implement in
17 January 2023, stand to lower overall reimbursement fees even more.

18 4. The impact of these modifications (collectively, the "2023 Amendments") will
19 be swift and severe. Specifically, the 2023 Amendments will have an enormous impact on
20 Dentist Members (and thus the patients they are contracted to serve), as the changes will saddle
21 the dentists with reimbursement fees that continue to be well below market, unreasonable and
22 unjustifiable.

23 5. The reality is that the 2023 Amendments should never have been undertaken by
24 Defendants. The proposed changes violate Delta Dental's core mission by harming the
25 constituency to whom it owes both fiduciary and contractual duties: the dentists who are
26 members of Delta Dental's network and who work on a daily basis to provide critical oral
27 health care to the public. In addition, the Individual Defendants failed to undertake the type of
28 careful, deliberate review process that is required of fiduciaries with the responsibilities and

1 obligations of the Individual Defendants. Instead, Defendants' decision was presented to
2 Dentist Members as a *fait accompli*, with virtually no explanation, background, reasoning, or
3 negotiation for the decision.

4 6. This is also not a situation where Delta Dental can claim that it has been forced
5 to lower reimbursement fees to dentists in order to maintain its own financial viability or to
6 keep its fees to its customers competitive. To the contrary, Delta Dental is flush with cash: it
7 has billions of dollars in excess capital, and its bloated revenue stream allows it to make
8 oversized and unjustified payments to the Individual Defendants, including paying its directors
9 hundreds of thousands of dollars per year and its executives millions of dollars per year.
10 Indeed, Delta Dental has hoarded so much money off the backs of its Dentist Members that it
11 could easily pay them a higher and fair reimbursement fee while passing no additional fees
12 onto its customer base.

13 7. Moreover, Delta Dental has taken steps to assure that its self-interested
14 reimbursement decisions, including the 2023 Amendments, are beyond any meaningful
15 challenge by Dentist Members. Toward this end, the Individual Defendants have firmly
16 entrenched themselves in their positions by preventing Dentist Members – the stakeholders for
17 whom Delta Dental was created – or the public from voting on or even having any meaningful
18 review of any of their decisions as well as the tenure of their exorbitantly compensated
19 positions. This is because, unlike public companies, Delta Dental, which is formed as a non-
20 profit mutual benefit corporation, has manipulated its charter and bylaws to effectively prevent
21 its Dentist Members from exercising voting rights to determine its policies, its Board
22 composition, or its treatment of its Dentist Members. As a result, the Individual Defendants
23 have complete and unfettered control over Delta Dental without consideration of the economic
24 plight they have imposed on Delta Dental's Dentist Members or the resultant impact on access
25 to dental care by the public.

26 8. Having been left with no alternative, CDA brings this action on behalf of its
27 members who are Delta Dental's Dentist Members, which includes (a) Premier Specialty
28 Dentists, (b) California general dentists who are parties to or subject to a PPA with Delta

1 Dental for participation in the Delta Dental Premier Network to provide dental benefit coverage
2 (“Premier General Dentists”), and (c) California dentists who are parties or subject to a PPA
3 with Delta Dental for participation in the Delta Dental Preferred Provider Organization or
4 “PPO” network to provide dental benefit coverage (“PPO Dentists”), in order to redress the
5 wrongs alleged herein. In enacting the 2023 Amendments, the Individual Defendants have
6 breached their duties of due care and loyalty to Delta Dental’s Premier Specialty Dentist
7 Members, its Premier General Dentist Members, and its PPO Dentist Members. Among other
8 things, these duties require the Individual Defendants to act in good faith, including to make
9 reasonable inquiry, to ensure that any decision or action affecting Delta Dental’s Dentist
10 Members has been reasonably investigated and that the decision is based on accurate facts and
11 valid information. These duties also require the Individual Defendants to consider and
12 reasonably balance the interests and needs of Delta Dental’s Dentist Members – including the
13 Premier Specialty Dentist Members, the Premier General Dentist Members, and the PPO
14 Dentist Members – in order to serve the corporate purpose of “building the strongest network
15 of dental providers” in California, rather than simply enriching themselves.

16 9. By virtue of the conduct alleged herein, Delta Dental has also breached its
17 contractual obligations under its Bylaws, its PPAs with the Premier Specialty Dentists, Premier
18 General Dentists, and PPO Dentists and violated the covenant of good faith and fair dealing
19 implied by law in each PPA.

20 **PARTIES**

21 10. CDA is a California non-profit corporation with its principal place of business in
22 Sacramento, California. Since 1870, CDA has worked to empower California’s community of
23 dentists and is the largest state dental association in the country. As a membership-based
24 organization comprised of more than 27,000 California dentists and dental students, CDA’s
25 mission is to support the successful practices of its members in service to their patients and the
26 public in all stages of their careers, including education, practice support, and advocacy,
27 including legal advocacy. Everything CDA does is for the purpose of supporting dentists, their
28

1 patients, and the ever-evolving profession of dentistry. CDA has associational standing to
2 bring this claim on behalf of CDA member dentists because:

3 a. each CDA member dentist who is a Premier Specialty Dentist, a Premier
4 General Dentist, or a PPO Dentist, has standing to bring a claim in his or her own right;

5 b. protecting the interests of the CDA member dentists is germane to and a
6 part of CDA's purpose;

7 c. neither the claims asserted nor the relief requested requires the
8 participation of any individual CDA member dentist for adjudication; and

9 d. the CDA member dentists on whose behalf this action is brought are
10 suffering immediate and threatened injury because of Delta Dental's actions.

11 11. In addition, in a prior action before the San Francisco Superior Court involving
12 many of the same parties and pertinent facts, the Court considered the issue of whether CDA
13 has associational standing to assert fee related claims against Delta Dental such as the claims
14 brought in this action. After extensive briefing and hearing, in January 2016, the Court
15 determined unequivocally that CDA has associational standing to assert claims such as these on
16 behalf of its members.

17 12. Defendant Delta Dental is a California corporation with a principal place of
18 business located in San Francisco, California. Delta Dental is the largest provider of dental
19 plans in California and dominates the market for dental plans provided to companies and state
20 government agencies in California. According to its Articles of Incorporation, Delta Dental is
21 incorporated as a non-profit tax-exempt corporation under California law for the "specific and
22 primary purpose" of "provid[ing] dental benefit coverage through contracts with independent
23 professional service providers."

24 13. Upon information and belief, Defendant Lynn L. Franzoi ("Franzoi") has been a
25 member of the Delta Dental Board since 2011. She served as the Chair of the Board from
26 August 2017 until December 2019. According to Delta Dental's 2019 public tax filings,
27 Franzoi was at all relevant times paid more than \$1,000/hour and often more than \$3,000/per
28

1 hour for her board service and received in excess of \$1 million for being on the Delta Dental
2 board from 2015-2019.³

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	First Vice Chair	1.0	\$156,287	\$3,005	\$156,287
2016	First Vice Chair	1.0	\$174,287	\$3,352	\$330,574
2017	Chairman	3.0	\$213,287	\$1,367	\$543,861
2018	Chairman	5.0	\$288,775	\$1,111	\$832,636
2019	Chairman	5.0	\$328,788	\$1,265	\$1,161,424

7 14. Upon information and belief, Defendant Roy A. Gonella (“Gonella”) has been a
8 member of the Delta Dental Board since 2013 and has served as a member of Delta Dental’s
9 Audit Committee and Finance Committee. According to Delta Dental’s 2019 public tax filings,
10 Gonella was at all relevant times paid between \$820/hour and \$3,300/hour for his board
11 service, and received nearly \$1 million for being on the Delta Dental board from 2015-2019.

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Secretary	1.0	\$122,787	\$2,361	\$122,787
2016	Second Vice Chair	1.0	\$171,787	\$3,304	\$294,574
2017	First Vice Chair	2.0	\$170,287	\$1,637	\$464,861
2018	First Vice Chair	5.0	\$213,629	\$822	\$678,490
2019	First Vice Chair	5.0	\$218,788	\$841	\$897,278

17 15. Upon information and belief, Defendant Glen F. Bergert (“Bergert”) has been a
18 member of the Delta Dental Board since 1998 and has served as Chair of Delta Dental’s Audit
19 Committee and a member of Delta Dental’s Finance Committee. According to Delta Dental’s
20 2019 public tax filings, Bergert was at all relevant times paid between \$900/hour and
21 \$1,912/hour for his board service and received in excess of \$1 million for being on the Delta
22 Dental board from 2015-2019.

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Director	2.0	\$198,801	\$1,912	\$198,801
2016	Director	2.0	\$175,592	\$1,688	\$374,393
2017	Second Vice Chair	3.0	\$176,320	\$1,130	\$550,713
2018	Second Vice Chair	5.0	\$244,248	\$939	\$794,961

27 ³ The IRS has not yet released Fiscal Year 2020 Form 990 filings for non-profit tax-exempt
28 organizations.

2019	Second Vice Chair	5.0	\$268,000	\$1,031	\$1,062,961
------	----------------------	-----	-----------	---------	--------------------

16. Upon information and belief, Defendant Steven F. McCann (“McCann”) has been a member of the Delta Dental Board since July 2007 and has served as a member of Delta Dental’s Audit Committee and Finance Committee. According to Delta Dental’s 2019 public tax filings, McCann was at all relevant times paid more than \$800/hour and often more than \$1,400/per hour for his board service and received nearly \$1 million for being on the Delta Dental board service from 2015-2019.

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Director	2.0	\$147,287	\$1,416	\$147,287
2016	Director	2.0	\$120,027	\$1,154	\$267,314
2017	Director	3.0	\$125,287	\$803	\$392,601
2018	Director	5.0	\$226,163	\$870	\$618,764
2019	Director	5.0	\$289,655	\$1,114	\$908,419

17. Upon information and belief, Defendant Heidi Yodowitz (“Yodowitz”) has been a member of the Delta Dental Board since April 2017. She is the current Chair of the Board and has served as a member of Delta Dental’s Audit Committee and Finance Committee. According to Delta Dental’s 2019 public tax filings, Yodowitz was at all relevant times paid more than \$500/hour for her board service and received \$367,334 for being on the Delta Dental board service from 2017-2019.

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2017	Director	3.0	\$82,287	\$527	\$82,287
2018	Director	4.0	\$119,847	\$576	\$202,134
2019	Director	5.0	\$165,200	\$635	\$367,334

18. Upon information and belief, Defendant Terry A. O’Toole (“O’Toole”) has been a member of the Delta Dental Board since January 2008 and has served as Chair of Delta Dental’s Finance Committee and a member of Delta Dental’s Audit Committee. According to Delta Dental’s 2019 public tax filings, O’Toole was at all relevant times paid nearly \$1,000/hour and often more than \$2,000/per hour for his board service and received in excess of \$1 million for being on the board of Delta Dental from 2015-2019.

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Treasurer	2.0	\$198,000	\$1,904	\$198,000

2016	Treasurer	2.0	\$211,044	\$2,029	\$409,044
2017	Treasurer	3.0	\$226,333	\$1,451	\$635,377
2018	Treasurer	5.0	\$246,718	\$949	\$882,095
2019	Treasurer	5.0	\$268,000	\$1,031	\$1,150,095

19. Upon information and belief, Defendant Andrew J. Reid (“Reid”) has been a member of the Delta Dental Board since 2015 and has served as a member of Delta Dental’s Audit Committee and Finance Committee. According to Delta Dental’s 2019 public tax filings, Reid was at all relevant times paid more than \$600/hour and often more than \$2,000/per hour for his board service and received in excess of \$1 million for being on the Delta Dental board from 2015-2019.

Year	Position	Avg. Hrs/Week	Compensation	\$/Hour	Total
2015	Chairman	2.0	\$200,287	\$1,926	\$200,287
2016	Chairman	2.0	\$222,784	\$2,142	\$423,071
2017	Immediate Past Chair	3.0	\$228,620	\$1,466	\$651,691
2018	Immediate Past Chair	5.0	\$171,182	\$658	\$822,873
2019	Immediate Past Chair	5.0	\$192,788	\$741	\$1,015,661

20. Defendant Michael J. Castro (“Castro”) has served as Delta Dental’s President and Chief Executive Officer (“CEO”) since February 2019. Since joining Delta Dental in June 2000, he has held numerous roles, including Controller from June 2000 until September 2004, Chief Financial Officer (“CFO”) from September 2004 until October 2018, and Acting CEO from October 2018 until 2019. According to Delta Dental’s 2019 public tax filings, Castro received \$11,476,381 in compensation for his employment by Delta Dental from 2015-2019.

Year	Position	Salary	Bonus & Incentive	Other Comp.	Total By Year
2015	EVP/CFO	\$566,496	\$854,926	\$27,370	\$1,448,792
2016	EVP/CFO	\$566,496	\$2,074,616	\$70,852	\$2,711,964
2017	EVP/CFO	\$566,496	\$1,289,511	\$76,554	\$1,932,561
2018	President, CEO; Former CFO	\$663,860	\$1,462,000	\$80,414	\$2,206,274
2019	President, CEO	\$1,004,492	\$2,126,814	\$45,484	\$3,176,790

1 21. Defendant Alicia F. Weber (“Weber”) has served as Delta Dental’s Executive
2 Vice President and CFO since November 2018. Since joining Delta Dental in January 2005,
3 she has held multiple roles, including Controller from January 2005 until February 2010 and
4 Senior Vice President, Finance from February 2010 until November. According to Delta
5 Dental’s 2019 public tax filings, Weber received \$6,530,646 in compensation for her
6 employment by Delta Dental from 2015-2019.

7

Year	Position	Salary	Bonus & Incentive	Other Comp.	Total By Year
8 2015	SVP	\$383,200	\$447,982	\$39,061	\$870,243
9 2016	SVP	\$399,741	\$1,132,245	\$41,370	\$1,573,356
10 2017	SVP/CFO	\$400,000	\$720,950	\$41,747	\$1,162,697
11 2018	EVP/CFO	\$421,692	\$850,000	\$49,962	\$1,321,654
12 2019	EVP/CFO	\$540,515	\$1,002,420	\$59,761	\$1,602,696

13 22. The compensation paid to Delta Dental’s directors and officers is significantly
14 higher than that paid to directors and officers in other non-profit companies. Delta Dental’s
15 directors also receive vastly more in compensation than directors of non-profit companies, a
16 reality made all the worse because the Company’s Bylaws expressly prohibit any salary to
17 Delta Dental’s directors.

18 23. Plaintiff is ignorant of the true names and capacities, whether individual,
19 corporate, or otherwise, of defendants sued herein as DOES 1 through 20, inclusive, and
20 therefore sue these defendants by such fictitious names. Plaintiff will amend this Complaint to
21 allege the true names and capacities of such defendants if and when they are ascertained.
22 Plaintiff is informed and believes, and thereon alleges, that each of the DOE defendants sued
23 herein was at all relevant times, the agent, employee, director, officer, or representative of the
24 named Defendants and/or the other DOE defendants, was acting within the purpose and scope
25 of such relationship, and is responsible in some manner for the occurrences alleged in this
26 Complaint, and that Plaintiff’s injuries as alleged herein were proximately caused by their
27 respective acts and omissions.
28

1 **JURISDICTION AND VENUE**

2 24. This Court has jurisdiction over the causes of action asserted in this Complaint
3 pursuant to California Constitution, Article VI, § 10 and Cal. C.C.P. § 410.10, because this case
4 is a cause not given by statute to other trial courts.

5 25. This Court has jurisdiction over Defendants because they have sufficient
6 minimum contacts with California to render the exercise of jurisdiction by the California courts
7 permissible under traditional notions of fair play and substantial justice. For example, Delta
8 Dental is organized under the California Nonprofit Corporation Law, the agreement between
9 Dentist Members and Delta Dental is governed by California law, and Delta Dental’s principal
10 place of business is in, and Defendants caused harm to Plaintiff from within, the County of San
11 Francisco in the State of California.

12 26. Venue is proper in San Francisco County pursuant to Cal. C.C.P. § 395.5,
13 because Defendants’ wrongful conduct has in substantial part taken place in this forum.

14 **FACTUAL ALLEGATIONS**

15 27. Delta Dental, operating as a non-profit, tax-exempt corporation organized under
16 the laws of California, is the largest provider of dental plans in California. Its purpose, as stated
17 in its Articles of Incorporation, is “to provide dental benefit coverage through contracts with
18 independent professional service providers.” Delta Dental’s own website describes the dentists
19 that it has contracts with (*i.e.*, Delta Dental’s Dentist Members) as “the strongest network of
20 dental providers in the country.” <https://www1.deltadentalins.com/about/corporate-profile.html>.

21 28. According to its current Bylaws, Delta Dental consists of two classes of members:
22 Dentist Members and Corporate Members. While Dentist Members are the equivalent of Delta
23 Dental’s shareholders, Dentist Members have no vote over the actions of Delta Dental or the
24 composition of the Company’s Board of Directors. That power lies exclusively with Delta
25 Dental’s Corporate Members, who consist of the members of the Board of Directors, at least
26 sixty percent of whom are required to be members who (a) are not dentists, (b) are not the spouse
27 of a dentist, and (c) have no significant interest in any entity that provides dental services. Only
28 twenty-five percent of Corporate Members are required to be practicing dentists licensed in

1 California. As a result of these requirements, the Board of Directors is dominated and controlled
2 by Corporate Members who are not dentists or affiliated with dentists. Based on its most
3 recently available public filing, Delta Dental's Board is comprised of ten members, seven of
4 whom are non-dentists.

5 29. Director nominees are chosen by Delta Dental's Board Chair and two additional
6 directors chosen by the Board Chair, and only Corporate Members, which are overwhelmingly
7 made up of non-dentists, can vote on directors. As a result, Delta Dental's core constituency –
8 the dentists who have contracts with Delta Dental to serve patients – have no meaningful say or
9 input into the Company's decision-making process, including the reimbursement fees for dentists
10 or even the selection of Delta Dental's Board or management or the compensation of the Board
11 or management.

12 30. Delta Dental's Board has delegated its authority regarding payments to its Dentist
13 Members to a "Dentist Compensation Committee." This includes matters involving adjustments
14 to compensation for dental providers or changes to the methodology for calculating such
15 compensation. No Dentist Members, including those who are also Corporate Members (and thus
16 can serve on the Board of Delta Dental), are permitted to serve on the committee.

17 31. Delta Dental claims to serve its mission by entering into PPAs with dentists
18 throughout California. The PPAs, including the provisions at issue in this action, are essentially
19 identical and specifically incorporate by reference the "Delta Dental Bylaws," "Participating
20 Dentist Rules," and "Delta Dental's Dentist Handbook." The dental providers that have entered
21 into a PPA with Delta Dental are all members of Delta Dental.

22 32. Upon information and belief, Delta Dental has been the dominant provider of
23 dental plans in California and, as such, has substantial market power, including power over its
24 individual dentists and the reimbursement fees they are paid.

25 33. Delta Dental is among the most profitable providers of dental plans in California
26 and has increased both its profits and market dominance over the past decade. According to
27 California's Department of Managed Healthcare Financial Summary Reports, in 2021, Delta
28 Dental had \$2.8 billion in revenue and \$3.1 billion in assets. Upon information and belief, Delta

1 Dental controls a substantial majority of the dental insurance market in California. As a result,
2 once a dentist joins the Delta Dental network it is very difficult for that dentist to leave the
3 network because of Delta Dental's market power. In addition, patients who work for companies
4 that have contracts with Delta Dental are strongly discouraged from using dentists outside the
5 Delta Dental network, which acts as a further deterrent to dentists considering whether to leave
6 the Delta Dental network.

7 34. Delta Dental sells several dental plans in California, including its Premier Plan
8 and its PPO Plan. The dentists who serve patients covered by Delta Dental's Premier Plan and
9 PPO Plan are members of Delta Dental and are among the independent professional service
10 providers that Delta Dental recognizes as critical to its stated mission of providing dental
11 coverage throughout California.

12 35. Delta Dental's directors and officers, including the Individual Defendants, have
13 been the primary beneficiaries of the extraordinary wealth and power created by Delta Dental.
14 For example, and as described above, Delta Dental's directors on average typically receive
15 hundreds of thousands of dollars per year for their "service" to Delta Dental, often at a rate of
16 more than \$2,000 per hour, despite the fact that Delta Dental's Bylaws state that directors "shall
17 not receive any salary for their services," and despite the fact that directors at not-for-profit
18 companies generally receive only minimal or no compensation at all. Delta Dental's officers
19 have also received inflated compensation for managing a non-profit, tax-exempt organization,
20 having received millions of dollars in salaries and bonuses annually, which on information and
21 belief, is well-beyond the compensation paid to officers at other not-for-profit companies.

22 36. Delta Dental has amassed the funds to pay these extraordinary compensation rates
23 through the hard work and skills of its Dentist Members, the immensely talented dentists who are
24 in its network. Delta Dental's strong network of high-quality dentists in California has given
25 Delta Dental an additional benefit: it has allowed it to offer competitively priced plans to
26 insureds while increasing market power and dominance, making it very difficult, if not
27 impossible, for dentists to leave the Delta Dental network without risking the loss of many
28

1 patients. As a result, Delta Dental has effectively locked in many of its Dentist Members, who
2 risk tremendous damage and disruption to their practices if they leave Delta Dental's network.

3 37. Defendants have used their tax-exempt, not-for-profit status and market power to
4 benefit themselves at the expense of Delta Dental's Dentist Members. For example, Delta
5 Dental reimburses Premier Specialty Dentists, Premier General Dentists, and PPO Dentists (as
6 well as other dental providers) at fees that are significantly below market. The maximum
7 allowable fees permitted by Delta Dental were established in 2010 and have not materially
8 increased since that time, even though the cost of providing quality dental services has
9 substantially increased over those 12 years. Under the PPA, dentists are not permitted to seek or
10 accept anything above the maximum allowable fees in exchange for services provided to
11 insureds covered by a Delta Dental plan.

12 38. On September 1, 2022, Delta Dental sent out similar notices to each of its Premier
13 Specialty Dentists, Premier General Dentists, and PPO Dentists. In the notices, which consisted
14 of a short letter accompanied by a two-page insert titled "FAQs," Delta Dental announced that it
15 will reduce various reimbursement fees while also making certain contract changes effective
16 January 1, 2023. With respect to Premier Specialty Dentists, including but not limited to
17 periodontists, endodontists and oral surgeons, Delta Dental advised that it was amending the
18 PPA to change the entire fee determination process to provide for lower maximum allowable
19 fees going forward. As a result of these reductions, many Premier Specialty Dentists who
20 perform vital oral health care for the public will suffer fee reductions of 20-40% below the
21 already sub-standard fees being paid for their services.

22 39. With respect to PPO Dentists, though Delta Dental's announcement speaks of
23 nominal increases for some procedures for some providers, the reality is that these increases will
24 turn out to be illusory. Since 2014, in order to participate in Delta Dental's vast network, PPO
25 Dentists have been forced to accept below market rates. With the 2023 Amendments, overall
26 reimbursement fees for PPO Dentist Members remain below market, failing to keep pace with
27 even basic inflationary costs, let alone account for the extraordinary demands being placed upon
28 dentists who must continually expand and improve their knowledge, equipment, instruments,

1 materials and services in accordance with the best current developments in oral health care.
2 Moreover, even the purportedly increased maximum allowable fees for certain procedures –
3 which, again, are the maximum amount Dentist Members are permitted to recoup in connection
4 with services provided to Delta Dental patients – remain well below market.

5 40. With respect to the Premier General Dentists, although Delta Dental’s
6 announcement speaks of little to no increases in its fee schedule, the maximum allowable fees for
7 these dentists likewise continue to remain well below market. For example, Premier General
8 Dentists will suffer on average a 18-22% decrease on bread-and-butter procedures, including
9 bitewing x-rays.

10 41. Reduced and below market fees of this magnitude might theoretically be justified
11 in truly extreme circumstances where, for example, a network is facing severe financial difficulty
12 in attracting patients to its network such that its financial future is in jeopardy. But that is not
13 close to the case here. According to California’s Department of Managed Healthcare Financial
14 Summary Reports, Delta Dental had \$2.8 billion in revenue and \$3.1 billion in assets in 2021
15 alone. At the same time, while Delta Dental is thriving, its Dentist Members are working harder
16 than ever, and the costs to them of providing patient care, including dental team staffing costs,
17 have been significantly increasing. Indeed, in the notice provided to Premier Specialty Dentists,
18 Premier General Dentists, and PPO Dentists, Delta Dental itself acknowledged the “obstacles”
19 faced by dental providers as a result of COVID-19, staffing shortages, and extraordinary
20 inflationary costs.

21 42. Delta Dental does not even try to explain this paradox or otherwise justify its
22 treatment of its Dentist Members. In its bare-bones communication announcing the contract and
23 fee changes, Delta Dental claims – without explanation or elaboration – that these changes were
24 implemented to provide “for greater clarity and to bring certain provisions up to date.”
25 Regarding the reduction in Premier Specialty Dentist reimbursement fees in particular, Delta
26 Dental claims that “[o]verall, the network fees we pay these Specialists in California are
27 significantly higher than fees paid by our competitors. As a result, we must adjust our fee
28

1 structure to more closely align our contracted fees with those generally accepted as network
2 levels in the industry.”

3 43. But there is no basis for Delta Dental’s assertions, and Delta Dental provides no
4 analysis or factual support for its claims. The truth is that while Delta Dental’s Dentist Members
5 provide extraordinary services to their patients, the fees set by Delta Dental do not serve the
6 interests of Dentist Members or their patients. Rather, Delta Dental is setting fees to benefit
7 Defendants and is not adequately considering the interests of Delta Dental’s own Dentist
8 Members – to whom it owes fiduciary and contractual duties – or the patients served by these
9 dentists. Plaintiff is informed and believes, and thereon alleges, that as a not-for-profit
10 organization with billions in revenue and assets, Delta Dental should have no issue maintaining
11 competitiveness in offering cost effective dental plans to its customers, while still paying
12 reasonable reimbursements to its Dentists Members. Indeed, Defendants never disclose the
13 analyses they purportedly went through to reach their conclusions or to assess the impact of these
14 changes on the dentists and patients or the information and data that purportedly was considered
15 on any of these issues. In fact, when CDA asked Delta Dental for an explanation of these
16 changes, Delta Dental failed to provide any.

17 44. Nor can Delta Dental reasonably justify these changes and reductions. Upon
18 information and belief, as a result of the changes, many of CDA’s members will be unable to
19 continue to provide the same dental benefits and services through Delta Dental. These CDA
20 members have no choice but to stay with the network given Delta Dental’s market dominance
21 and are likely to be faced with a Hobson’s choice: modify the scope and extensiveness of
22 services provided or turn patients away and incur significant losses (hardly a viable option for a
23 dentist trying to earn a living and provide the services their patients need).

24 45. This is not Delta Dental’s and the Individual Defendants’ first attempt to enrich
25 themselves at the expense of Delta Dental’s Dentist Members. In 2013, Delta Dental sought to
26 reduce maximum allowable fees for Premier Dentists based on the false premise that the existing
27 fees were above market. CDA filed suit objecting to the proposed changes, and the litigation
28 was ultimately settled without the reductions being implemented. Beginning in 2020 and into

1 2021, Delta Dental again notified its Dentist Members who are Specialty Dentists that it planned
2 to reduce the maximum allowable fees applicable to all procedures performed for patients with
3 Delta Dental plans – again under the guise of supposedly above-market rates. CDA again
4 objected, and Delta Dental did not ultimately implement the threatened changes. Since then,
5 despite the assertion by Delta Dental that these fee decreases were essential, Delta Dental
6 continued to add to its profits, capital position and market dominance. Delta Dental’s 2023
7 Amendments are equally problematic and unjustified.

8 46. At bottom, there can be no doubt that the 2023 Amendments would reduce rather
9 than enhance the availability of dental coverage through contracts between Delta Dental and its
10 Dentist Members – the exact opposite of Delta Dental’s stated mission and reason for
11 qualification of tax-exempt status. Meanwhile, Delta Dental’s own profits, capital position and
12 market dominance continue to increase, all at the expense of its Dentist Members and the
13 patients those Dentist Members serve.

14 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

15 **Fiduciary and Other Duties**

16 47. By reason of their positions as officers and/or directors of the Company, each of
17 the Individual Defendants owed and owe Delta Dental and its Dentist Members fiduciary
18 obligations of trust, loyalty, good faith, and due care, and were and are required to perform their
19 duties in good faith, in a manner that the officers and directors reasonably believe to be in the
20 best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily
21 prudent person in a like position would use under similar circumstances.

22 48. To discharge their duties, the Individual Defendants were required to, among
23 other things:

24 a. Ensure that any decision or action affecting Dentist Members has been reasonably
25 investigated, including a consideration of relevant factors, and that the decision is based on
26 accurate facts and valid information;

1 b. Ensure that any decision considers and reasonably balances the interests and
2 needs of Delta Dental members, including Dentist Members, in order to serve the corporate
3 purpose of providing dental benefit coverage through contracts with these dentists;

4 c. Ensure that an appropriate process is employed to ensure that decisions do not
5 conflict with the Individual Defendants' obligation to serve Delta Dental's mission, and that such
6 decisions are in the best interest of Delta Dental and its Dentist Members;

7 d. Ensure that their actions were in the best interest of the Company and its Dentist
8 Members rather than in the Individual Defendants' self-interest;

9 e. Avoid engaging in conduct that is in their own self-interest, including the receipt
10 of unreasonable and excessive compensation;

11 f. Ensure that the compensation of its officers is just and reasonable;

12 g. Refrain from participating in any transactions where the Individual Defendants
13 receive or are entitled to receive a personal financial benefit not equally shared by Delta Dental
14 and its members, including Dentist Members;

15 h. Refrain from unjustly enriching themselves at the expense or to the detriment of
16 Delta Dental and its members, including Dentist Members; and/or

17 i. Abide by the dictates of its organizational documents and the California Nonprofit
18 Corporation Law.

19 49. As acknowledged by Delta Dental in a December 19, 2017 Press Release, "[a]s
20 fiduciaries, the directors . . . represent the collective interests of the company's stakeholders."
21 This includes Dentist Members.

22 50. The Individual Defendants, as officers and directors of Delta Dental, are also
23 bound by Delta Dental's Bylaws, most recently amended on April 23, 2020 ("Bylaws"). The
24 Bylaws describe the duties undertaken by the Board and the active oversight role the Board plays
25 in the Company's business affairs.

26 51. Specifically, the Bylaws provide that "[s]ubject to limitations of the Articles of
27 Incorporation, and these Bylaws, and the general nonprofit corporation law of the State of
28 California, all corporate powers shall be exercised by or under the authority of, and the business

1 affairs of the corporation shall be controlled by, the Board of Directors.” Among other things,
2 the Bylaws require the Board:

3 a. To select and remove all officers, agents and employees of the corporation, prescribe
4 the authority and duties for them, fix their compensation, and require security for
faithful service.

5 b. To conduct, manage and control the property and business of the corporation, and to
6 make such rules and regulations therefore as they may deem best advised.

7 . . .

8 f. To select among its membership an executive committee and other committee, and to
9 delegate to such committees any of the powers and authority of the directors in the
10 management of the business and affairs of the corporation except the adoption,
11 amendment or repeal of provisions of these Bylaws and of the Articles of Incorporation,
the levy of assessments, or other actions prohibited by California Corporations Code
12 Section 7212; to appoint such committees, composed of persons who need not
necessarily be members of this corporation, as it may deem necessary or expedient, to
act in an advisory capacity.

13 g. To establish schedules for payments to dentists for professional services performed
14 by dentists for which this corporation is obliged to make payment, including as part
thereof, allowances and disallowances for materials thereof, allowances and
15 disallowances for materials and facilities used in the performance of such services; to
amend or modify all or any part of said schedules for payment; to give notice of such
16 schedules for payments and any changes or modification thereof to all dentists who may
perform professional services for which this corporation is obligated to make payment.

17 . . .

18 j. To enter into and terminate contracts for the provision of dental services by dentists,
19 and to establish terms and conditions pursuant to which the corporation may reimburse
its subscribers or enrollees for dental services provided by dentists with whom the
20 corporation has not contracted.

21 52. The Bylaws also prohibits the directors from receiving any salary for their
22 services:

23 **Section 8. Fees and Compensation.** Directors, as such, shall not receive any salary for
24 their services, but by resolution the Board of Directors may provide for reimbursement
to themselves of expenses of attending any meetings of the Board or committees and
25 may provide a fixed fee to compensate directors for any time in traveling to, preparing
for and attending meetings of the Board of Directors or committees. Members of the
26 Board of Directors are eligible to hold office in the corporation and receive such salary
as may be fixed for that office.
27
28

1 53. The Bylaws, and the duties imposed thereby, are explicitly incorporated into the
2 PPA between each Premier Specialty Dentist, Premier General Dentist, or PPO Dentist and
3 Delta Dental.

4 **Breaches of Duties**

5 54. The Individual Defendants failed to act in good faith and with due care in their
6 decision to enact the 2023 Amendments, which memorialize unreasonably low maximum
7 reimbursement fees and which will cause significant harm to Dentist Members. Plaintiff is
8 informed and believes, and thereon alleges, that the Individual Defendants failed to follow an
9 appropriate process in approving the reimbursement reductions and contract changes to the PPA.
10 To ensure that these modifications would be in the best interest of Delta Dental and its Dentist
11 Members, the Individual Defendants were required to take reasonable measures to confirm that
12 the changes are based on valid and accurate data that is sufficient for the purpose of the decision
13 presented and that the interests of Dentist Members have been reasonably and appropriately
14 considered and balanced. The Individual Defendants failed to do so.

15 55. Plaintiff is informed and believes, and thereon alleges, that in determining the
16 contract changes and fee modifications, including the reductions in the maximum allowable fees
17 that are being imposed on Premier Specialty Dentists and the overall fee modifications that are
18 being imposed on PPO Dentists and Premier General Dentists, the Individual Defendants did not
19 base their calculations and decisions on valid data setting forth actual fee levels for dentists and
20 specialty dentists, including but not limited to periodontists, endodontists and oral surgeons, in
21 California, in a reasonable and accurate manner, nor did they perform the investigation that a
22 reasonably prudent person would require into the actual impact and effect of those decreases on
23 either the affected dentists, or upon the availability of those dentists to provide services covered
24 under Delta Dental plans. The Individual Defendants knew or should reasonably have known
25 that any data they were relying upon, to the extent it exists, did not provide a valid basis for the
26 maximum allowable fee modifications Delta Dental is implementing. As such, the Individual
27 Defendants acted in bad faith and contrary to the best interests of Delta Dental's Premier
28

1 Specialty Dentists, Premier General Dentists, and PPO Dentists, as well as contrary to the stated
2 purpose of the organization, which is to enter into agreements with dental providers that
3 maximize coverage for the public.

4 56. Further, though Delta Dental’s notice claims that the 2023 Amendments are
5 necessary to “more closely align” its fees to those “generally accepted as network levels in the
6 industry,” Delta Dental’s Dentist Members had no input on the changes including how fee
7 reimbursements were determined. Plaintiff is informed and believes, and thereon alleges, that
8 this vague and general statement is based upon invalid data and flawed information that does not
9 support the stated assertion nor provide a reasonable basis for the changes that Delta Dental
10 seeks to impose. Plaintiff is further informed and believes, and thereon alleges, that the
11 Individual Defendants failed to undertake a reasonable and unbiased assessment of competitive
12 fee levels and have no legitimate basis to conclude or assert that fees Delta Dental pays to
13 California dentists and specialty dentists, including but not limited to periodontists, endodontists,
14 and/or oral surgeons, in California, are in fact materially higher than fees paid by other dental
15 plans. Moreover, Delta Dental is a tax-exempt corporation and thus pays virtually no taxes,
16 which gives it a substantial competitive advantage over most other companies offering dental
17 plans in California. Thus, Delta Dental’s competitive need for the actions at issue in this
18 Complaint are materially different from those of a tax paying corporation – a fact that should
19 have been considered by the Individual Defendants in exercising due care and reasonable
20 prudence but, upon information and belief, was not. Additionally, Plaintiff is informed and
21 believes, and thereon alleges, that Delta Dental failed to consider its existing reserves, revenue,
22 and patient utilization costs in evaluating whether the 2023 Amendments are appropriate or
23 required given the risk they pose to provider availability within the Delta Dental network.

24 57. The Individual Defendants also failed to act in good faith and breached their duty
25 of loyalty by acting in their own self-interest rather than in the best interests of the members to
26 whom they owe fiduciary duties, including by receiving unreasonable and unjust compensation.
27 Though Delta Dental is a non-profit organization, in 2019 alone, its Chief Executive Officer was
28 paid over \$3 million in compensation. The next nine highest-paid Delta Dental executives

1 earned more than \$1 million each that year. Upon information and belief, such compensation is
2 unreasonable and far exceeds that which is appropriate for officers of a non-profit organization,
3 including one of Delta Dental's size and business. Equally problematic is Delta Dental's Board
4 compensation, with individual directors receiving compensation in 2019 ranging from \$101,788
5 to \$328,788 for one to five hours of work each week. Delta Dental – though purportedly a non-
6 profit organization – is also sitting on a huge cash reserve of \$1.7 billion as of 2019. While
7 Delta Dental and the Individual Defendants are bloated with cash, Delta Dental's Dentist
8 Members have been subject to reimbursement caps that were set in 2010 and many of which
9 were *decreased* in accordance with the recently implemented fee modifications – changes that
10 will cause significant harm to Dentist Members that are certain to compromise Delta Dental's
11 mission of providing dental coverage through provider agreements.

12 58. Plaintiff is informed and believes, and thereon alleges, that Delta Dental's and the
13 Individual Defendants' conduct – which violates California Nonprofit Corporation Law, Delta
14 Dental's Bylaws, the PPA and common law – is intended to enhance the Company's own
15 substantial profits so as to enrich the Individual Defendants, while sacrificing the financial
16 welfare of the Company's Dentist Members, and to further increase Delta Dental's dominance of
17 the market and to reduce rather than enhance the availability of dental benefit coverage in
18 California through contracts with independent provisional service providers.

19 FIRST CAUSE OF ACTION

20 **(Breach of Duty of Care Against All Individual Defendants)**

21 59. Plaintiff realleges and incorporates herein by reference each and every allegation
22 contained above as if fully set forth herein.

23 60. The Individual Defendants owe Dentist Members of Delta Dental fiduciary duties.
24 By reason of their fiduciary relationships, the Individual Defendants owe Delta Dental's Dentist
25 Members the highest obligation of good faith, fair dealing, due care and loyalty. Specifically,
26 the Individual Defendants owe Dentist Members a duty of due care to ensure that their actions do
27 not unduly harm Dentist Members, and that these actions enhance rather than reduce the ability
28 to provide dental benefit coverage through contracts with independent professional providers.

1 Among other things, these duties require the Individual Defendants to make reasonably certain
2 that any decision or action affecting members has been reasonably investigated, that all pertinent
3 facts have been considered, and that the decision is based on accurate facts and valid
4 information. These duties also include the duty to abide by the dictates of its organizational
5 documents, the California Nonprofit Corporation Law and applicable common law.

6 61. In enacting the contract changes and maximum allowable fee modifications, the
7 result of which was to decrease the overall reimbursements received by Dentist Members and to
8 subject them to reimbursement fees significantly below market, the Individual Defendants
9 breached their fiduciary duties to Dentist Members. Specifically, the Individual Defendants
10 failed to follow an appropriate process to determine whether the reimbursement modifications
11 and contract changes to the PPA were in the best interest of Delta Dental and Dentist Members.
12 This failure constitutes a breach of the duty of care owed by the Individual Defendants to Dentist
13 Members.

14 62. As a direct and proximate result of the Individual Defendants' breaches of their
15 fiduciary duties including the duty of care, Dentist Members who are CDA members have
16 suffered economic damage including in the form of inadequate and improper fee
17 reimbursements. Moreover, unless Delta Dental is enjoined from enforcing the 2023
18 Amendments, these dentists will suffer irreparable harm, such as being compelled to provide
19 fewer services to covered patients, suffering from a decline in reputation, and/or shuttering their
20 practices entirely.

21 **SECOND CAUSE OF ACTION**

22 **(Breach of Duty of Loyalty Against All Individual Defendants)**

23 63. Plaintiff realleges and incorporates herein by reference each and every allegation
24 contained above as if fully set forth herein. The Individual Defendants owe Dentist Members
25 fiduciary duties including a duty of loyalty to ensure that their actions are in the best interest of
26 the Company and its members rather than in the Individual Defendants' self-interest. Among
27 other things, the duty of loyalty obligates the Individual Defendants to refrain from engaging in
28 conduct that is motivated by their own self-interest and that enriches themselves at the expense

1 of the Company and its members, such as awarding and/or receiving unreasonable and excessive
2 compensation in violation of Delta Dental's organizational documents, the California Nonprofit
3 Corporation Law and applicable common law, while at the same time enacting policies that
4 cause substantial economic and other harm to Dentist Members and that compromise the stated
5 mission of the non-profit, which relies on the establishment of reasonable agreements between
6 Delta Dental and its Dentist Members.

7 64. In imposing the 2023 Amendments, the Individual Defendants have acted (and
8 continue to act) in their own self-interest, funding their excessive and improper compensation
9 through forced PPA contract amendments and fee modifications that specifically harm Dentist
10 Members. The Individual Defendants' conduct constitutes a breach of the duty of loyalty owed
11 by them to Dentist Members including those who are members of CDA.

12 65. As a direct and proximate result of the Individual Defendants' breach of their duty
13 of loyalty, Dentist Members who are CDA members have suffered economic damage including
14 in the form of inadequate and improper fee reimbursements. Moreover, unless Delta Dental is
15 enjoined from enforcing the 2023 Amendments that resulted from the Individual Defendants'
16 breaches of fiduciary duty, these dentists will suffer irreparable harm, such as being compelled to
17 provide fewer services to covered patients, being compelled to provide a lower standard of care
18 to covered patients, suffering from a decline in reputation, and/or shuttering their practices
19 entirely.

20 **THIRD CAUSE OF ACTION**

21 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Delta Dental)**

22 66. Plaintiff realleges and incorporates herein by reference each and every allegation
23 contained above as if fully set forth herein.

24 67. Dentist Members entered into written contracts referred to herein as the PPA with
25 Delta Dental to become participating dentists in Delta Dental's Premier or PPO network. The
26 PPA contains an implied covenant of good faith and fair dealing under California and any other
27 applicable law.

28

1 73. Dentist Members entered into written contracts referred to herein as the PPA with
2 Delta Dental to become participating dentists in Delta Dental's Premier or PPO network.

3 Among other documents, the PPA expressly incorporates Delta Dental's Bylaws, which in itself
4 constitutes a contract between Delta Dental and its members

5 74. Dentist Members who are CDA members performed all or substantially all of the
6 actions that the PPA and Bylaws requires of them and continue to do so.

7 75. Delta Dental's award of excessive compensation to the Individual Defendants
8 constitutes a breach of the Bylaws and the PPA. Article V, Section 8 of Delta Dental's Bylaws,
9 which are incorporated by reference into the PPA, states:

10 Directors, as such, shall not receive any salary for their services, but by resolution the
11 Board of Directors may provide for reimbursement to themselves of expenses of
12 attending any meetings of the Board or committees and may provide a fixed fee to
13 compensate directors for any time in traveling to, preparing for and attending meetings
of the Board of Directors or committees. Members of the Board of Directors are eligible
to hold office in the corporation and receive such salary as may be fixed for that office.

14 76. Similarly, Article I, Section 2 of the Bylaws states:

15 This corporation is organized pursuant to the General Nonprofit Corporation Law, and
16 shall conduct its affairs and business without pecuniary gain or other profit to its
17 members and without distribution of any gain or dividends to its members; provided that
18 members may receive compensation for professional services rendered and for services
given as an officer or other employee of the corporation.

19 77. In contravention of these provisions, at least since 2015, Delta Dental has
20 awarded each of its Directors hundreds of thousands of dollars in compensation each year for
21 minimal work. Also in contravention of these provisions, at least since 2015, Delta Dental has
22 awarded its officers millions of dollars in compensation each year, an amount that is highly
23 excessive and far beyond what can reasonably considered appropriate compensation accorded
24 to an officer of a non-profit.

25 78. Delta Dental also violated Article V, Section 6 of its Bylaws, which requires the
26 Company to operate in accordance with the Articles of Incorporation, including the stated
27 purpose of the non-profit organization, which is to provide dental benefit coverage through
28 contracts with independent professional service providers. As alleged above, Delta Dental's

1 conduct reduced rather than enhanced dental benefit coverage through contracts with
2 independent professional service providers.

3 79. As a direct and proximate result of Delta Dental's contractual breaches, Dentist
4 Members who are CDA members have suffered economic damage in the form of improper and
5 inadequate fee reimbursements. Moreover, unless Delta Dental is enjoined from amending the
6 PPA as proposed, these dentists will suffer irreparable harm, such as being forced into untenable
7 fee structures that require these dentists to either modify the relationships they have developed
8 with covered patients, or suffer a significant disruption in their practices in which they have
9 invested and developed in reliance on Delta Dental's promises as set forth in the Bylaws and the
10 PPA and as represented by Delta Dental.

11 **FIFTH CAUSE OF ACTION**

12 **(Declaratory Relief Against All Defendants)**

13 80. Plaintiff re-alleges and incorporates herein by reference each and every allegation
14 of contained above as if fully set forth herein.

15 81. An actual dispute and controversy has arisen between Dentist Members who are
16 CDA members and Defendants concerning their respective rights, duties, and obligations under
17 the PPA. Plaintiff contends that the terms of the PPA, the Implied Covenant of Good Faith and
18 Fair Dealing inherent in the PPA, and the duty of loyalty and due care owed by Defendants to
19 Dentist Members and the duty of Defendants to provide dental benefit coverage through
20 contracts with independent professional service providers preclude Defendants from imposing
21 the reductions in the maximum approved fee amounts paid to Dentist Members that are the
22 subject of this action and that Delta Dental contends that it is entitled to impose in the 2023
23 Amendments.

24 82. A judicial declaration is necessary and appropriate at this time under the
25 circumstances in order that Plaintiff, on behalf of its members who are Dentist Members, may
26 ascertain the rights and duties of these Dentist Members and the Defendants hereinunder the PPA
27 and California statutory and common law. Absent such a declaration, Dentist Members who are
28

1 members of CDA will suffer substantial and irreparable harm upon the implementation of the
2 2023 Amendments.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief as follows:

- 5 1. For an injunction preventing Delta Dental from imposing the 2023 Amendments;
- 6 2. For a declaration determining that the conduct of the Individual Defendants in
7 enacting the 2023 Amendments that are the subject of this action violates the duty of loyalty and
8 due care owed by the Individual Defendants to Delta Dental's Premier Specialty Dentists,
9 Premier General Dentists, and PPO Dentists and its duty to provide dental benefit coverage
10 through contracts with independent service providers and therefore are unlawful;
- 11 3. For a declaration determining that the 2023 Amendments proposed by Delta
12 Dental that are the subject of this action are a violation of the covenant of good faith and fair
13 dealing under the PPA and/or a breach of the PPA itself and its obligation to provide dental
14 benefit coverage through contracts with independent professional service providers owed by
15 Defendants to Delta Dental's Premier Specialty Dentists, Premier General Dentists, and PPO
16 Dentists and are therefore unlawful and invalid; and,
- 17 4. For such other and further relief as the Court may deem just and proper.

18 Dated: December 30, 2022

19 WILSON SONSINI GOODRICH & ROSATI
20 Professional Corporation

21 By: 
22 David J. Berger
23 Michael S. Sommer (*pro hac pending*)
24 Jessica L. Margolis (*pro hac pending*)

25 *Attorneys for Plaintiff*
26 California Dental Association

VERIFICATION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

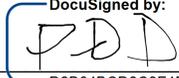
I, Peter DuBois, hereby declare as follows:

I am the Executive Director of the California Dental Association (“CDA”), Plaintiff in this action. I am authorized to make this verification for and on behalf of CDA and I make this verification for that reason.

I have read the foregoing Verified Complaint and know its contents. The matters stated in the foregoing Verified Complaint are true to the best of my knowledge, except as to the matters which are therein stated upon information or belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 30, 2022, in Sacramento, California.

DocuSigned by:

D2B64BCD2C8F4DB...
Peter DuBois